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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH - Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

Arizona Corporation Commission

DOCKETED

MAY 19 2015

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF  
RIO VERDE UTILITIES, INC., TO EXTEND ITS  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY FOR WATER SERVICE TO SERVE  
PORTIONS OF RIO VERDE UNITS TEN AND  
ELEVEN.

DOCKET NO. WS-02156A-14-0401

DECISION NO. 75091

OPINION AND ORDER

DATE OF HEARING:

March 18, 2015

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Sarah N. Harpring

APPEARANCES:

Craig A. Marks, Craig A. Marks, PLC, on behalf  
of Rio Verde Utilities, Inc.; and

Matthew Laudone, Staff Attorney, Legal  
Division, on behalf of the Utilities Division of  
the Arizona Corporation Commission.

**BY THE COMMISSION:**

This matter concerns an application filed with the Arizona Corporation Commission ("Commission") by Rio Verde Utilities, Inc. ("Rio Verde") to extend its Certificate of Convenience and Necessity ("CC&N") to provide water utility service in Maricopa County by adding approximately 49 acres of land inadvertently omitted from its CC&N service area previously ("CC&N extension area"). Rio Verde has been providing water utility service to the CC&N extension area for more than 20 years.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

...

...

**FINDINGS OF FACT****Background**

1. Rio Verde is an Arizona corporation engaged in providing water utility service to approximately 1,700 customers<sup>1</sup> in Maricopa County pursuant to CC&N authority granted by the Commission in Decision No. 43509 (July 27, 1973) and Decision No. 51873 (February 19, 1981).<sup>2</sup> (See Ex. S-1.)

2. Rio Verde's current rates and charges for water utility service were authorized in Decision No. 63585 (April 24, 2001).<sup>3</sup>

3. Rio Verde recently discovered that a portion of the area to which it has been providing water utility service for more than 20 years is not included within its CC&N service area for water.<sup>4</sup> (Tr. at 25-27.) The omitted area is included in Rio Verde's CC&N service area for wastewater. (*Id.*)

4. Rio Verde does not know when or how the omission occurred, but knows that the omission was unintentional. (*Id.*)

**Procedural History**

5. On December 4, 2014, Rio Verde filed with the Commission an application for approval to extend its CC&N to provide water utility service by adding the CC&N extension area, which comprises approximately 48.72 acres in an area contiguous to Rio Verde's current CC&N service area and located approximately 5 miles north of Fountain Hills and 5.5 miles east of Scottsdale in Maricopa County.

6. On December 9, 2014, Rio Verde filed a Supplement to Application.

7. On January 5, 2015, the Commission's Utilities Division ("Staff") filed a Sufficiency Letter stating that Rio Verde's application had met the sufficiency requirements outlined in the Arizona Administrative Code.

<sup>1</sup> This includes 52 customers located in the area for which a CC&N extension has been requested in this matter.

<sup>2</sup> Official notice is taken of these decisions. Rio Verde's CC&N has subsequently been extended by Decision No. 58865 (November 30, 1994), Decision No. 60929 (May 26, 1998), and Decision No. 64042 (September 18, 2001). Official notice is taken of these decisions as well.

<sup>3</sup> Official notice is taken of this decision.

<sup>4</sup> It was during preparation of a potential CC&N application for a proposed development to be called Rio Verde Highlands that Rio Verde discovered the omitted portion of the service area, for which approval of a CC&N extension is requested herein. (Tr. at 25-27.) (*Id.*) The proposed developer for Rio Verde Highlands subsequently decided not to pursue the development.

1           8.       On January 7, 2015, Rio Verde filed a Motion requesting that a procedural conference  
2 be scheduled to discuss a hearing schedule and the notice to be provided to property owners in the  
3 CC&N extension area.

4           9.       Also on January 7, 2015, a Procedural Order was issued scheduling a hearing in this  
5 matter to commence on March 18, 2015, and establishing other procedural requirements and  
6 deadlines, including a requirement for notice to property owners in the CC&N extension area.<sup>5</sup>

7           10.      On January 15, 2015, Rio Verde filed a Motion to Correct Official Caption, requesting  
8 that an erroneous reference to "Rio Verde Highlands" in the application caption be deleted.

9           11.      On January 16, 2015, a Procedural Order was issued correcting the caption.

10          12.      On February 9, 2015, Staff issued a Staff Report recommending approval of Rio  
11 Verde's application, with conditions.

12          13.      On February 26, 2015, Rio Verde filed an Affidavit of Mailing showing that public  
13 notice had been mailed to the owners of property within the requested CC&N extension area on  
14 January 28, 2015, and had been published in *The Fountain Hills Times* on February 4, 2015.<sup>6</sup>

15          14.      On March 18, 2015, the evidentiary hearing for this matter was held, with Rio Verde  
16 and Staff appearing through counsel. Rio Verde presented documentary evidence and the testimony  
17 of Ray Jones, utilities consultant. Staff presented documentary evidence and the testimony of Jian  
18 Liu, Utilities Engineer, and Gerald Becker, Executive Consultant III. No members of the public  
19 attended to provide public comment. During the hearing, it was determined that Rio Verde would  
20 file two documents from the Arizona Department of Water Resources ("ADWR") as Late-Filed  
21 Exhibits ("LFEs").

22          15.      On March 19, 2015, Rio Verde filed LFE A-6 and LFE A-7.

23          16.      On April 22, 2015, the Commission's Hearing Division issued a Recommended  
24 Opinion and Order in this matter.

25      ...

26  
27 <sup>5</sup> The two filings appear to have crossed in the mail.

28 <sup>6</sup> The mailing was timely. The publication was two days late, which Rio Verde attributes to the weekly publication schedule for the newspaper. (Tr. at 34.) Rio Verde asserts that this should be considered harmless error because the mailed notice was both timely and superior for effecting actual notice to those affected. (Tr. at 60-61.)

1        17. On April 28, 2015, Staff filed a Notice of Filing Updated Compliance Report,  
2 including a copy of an ADWR Water Provider Compliance Report, dated April 3, 2015, showing that  
3 Rio Verde is in compliance with the requirements of the ADWR Modified Non Per Capita  
4 Conservation Program ("MNPCCP") and with ADWR requirements governing water providers  
5 and/or community water systems.<sup>7</sup>

6 **The CC&N extension area**

7        18. The CC&N extension area is located entirely within the northern portion of Section 7,  
8 Township 4 North, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County.  
9 The legal description for the CC&N extension area is attached hereto and incorporated herein as  
10 Exhibit 1. A map showing the CC&N extension area is attached hereto and incorporated herein as  
11 Exhibit 2.

12        19. The CC&N extension area includes approximately 52 residential lots, the owners of  
13 which were mailed notice as required by the Procedural Order issued on January 7, 2015. The  
14 residential lots have been receiving water utility service from Rio Verde for more than 20 years.

15        20. Rio Verde's water system includes nine active wells with a total pumping capacity of  
16 6,510 gallons per minute ("GPM"), two storage tanks with a combined capacity of 1,040,000 gallons,  
17 hydro-pneumatic pressure systems, and a distribution system serving 1,706 active connections at the  
18 end of 2013. (Ex. S-1.) Rio Verde does not need or intend to add any plant facilities in order to serve  
19 the CC&N extension area. (Ex. A-2.)

20        21. Rio Verde's water system has adequate production and storage capacity to serve its  
21 present customer base, which includes those customers within the CC&N extension area, and to  
22 accommodate reasonable growth. (Ex. S-1.) No new developments are proposed to be built in the  
23 CC&N extension area. (Ex. A-2.)

24 **Regulatory Compliance**

25        22. Rio Verde's water system is providing water that complies with the safe drinking  
26 water standards enforced by the Maricopa County Environmental Services Department ("MCESD").<sup>8</sup>

27  
28 <sup>7</sup> Official notice is taken of the ADWR Water Provider Compliance Report of April 3, 2015.

<sup>8</sup> MCESD Public Water System Compliance Status Report of December 3, 2014.

1        23.     For the period from October 2013 through October 2014, Rio Verde's water system  
2 had water loss of approximately 5.91 percent, which is well below Staff's recommended 10-percent  
3 threshold for excessive water loss.

4        24.     Rio Verde is in good standing with the Commission's Corporations Division.

5        25.     Rio Verde has an approved Physical Availability Determination ("PAD") issued by  
6 ADWR on October 27, 1992. (Ex. A-2.) The PAD includes the water demand for the CC&N  
7 extension area, as the plats for the CC&N extension area were recorded and Rio Verde Unit Ten and  
8 Rio Verde Unit Eleven were developed in the late 1980s. (*Id.*)

9        26.     Rio Verde is located in the Phoenix Active Management Area ("AMA") and is subject  
10 to ADWR AMA reporting and compliance requirements. Since January 1, 2010, Rio Verde has been  
11 regulated by ADWR pursuant to the ADWR MNPCCP rather than the Annual Total Gallons Per  
12 Capita Per Day ("GPCD") Program.<sup>9</sup> (LFE A-6; LFE A-7.) ADWR reports that Rio Verde is in  
13 compliance with the MNPCCP and with ADWR's requirements governing water providers and/or  
14 community water systems.

15        27.     Staff noted that Rio Verde's most recent annual report filed with the Commission  
16 indicated that Rio Verde was subject to a Gallons Per Capita Per Day requirement, which would be  
17 inconsistent with Rio Verde's participation in the MNPCCP and should be corrected by Rio Verde in  
18 its next annual report, due in April 2015. (Tr. at 48-49.) Rio Verde indicated that it would provide  
19 the correct information on its next annual report. (Tr. at 59.)

20        28.     As of the hearing in this matter, Rio Verde did not possess a Maricopa County  
21 franchise agreement for the CC&N extension area. (Tr. at 30.) Additionally, Rio Verde was  
22 uncertain of its franchise coverage as to its existing CC&N service area in Maricopa County because  
23 Rio Verde had been unable to locate in its files a franchise agreement for that area as well. (Tr. at  
24 31.) As of the hearing, Rio Verde had not yet contacted Maricopa County to determine its current  
25 franchise coverage. (*Id.*) However, Rio Verde intended to communicate with the County, determine  
26

27 \_\_\_\_\_  
28 <sup>9</sup> The parties agree that a water utility cannot be regulated under both the GPCD Program and the MNPCCP at the  
same time. (Tr. at 42, 45, 47-48, 50, 58.)

1 the current franchise coverage, and apply for a franchise to cover the CC&N extension area and any  
2 other portion of Rio Verde's water service area that is not currently covered by a franchise. (*Id.*)

3 29. A.R.S. § 40-282(B) requires an applicant for a CC&N to show the Commission  
4 evidence that the applicant has received the required franchise or other permit required by the  
5 applicable county, city, or other public authority. A.R.S. § 40-282(D) provides that if a public  
6 service corporation has not yet been granted a franchise or permit, the public service corporation may  
7 apply for an order preliminary, or the Commission may make an order issuing a CC&N on the  
8 condition that the contemplated franchise or permit is obtained.

9 30. Mr. Jones testified that he has been involved in obtaining franchise agreements many  
10 times and that it typically takes approximately 60 to 120 days. (Tr. at 31-32.)

11 31. Mr. Becker opined that there is no reason to believe Rio Verde would have any trouble  
12 obtaining a franchise from Maricopa County.

13 **Rio Verde's Fitness and Properness**

14 32. Rio Verde's audited financial statements for 2013 show total assets of \$13,215,601,  
15 total operating revenues of \$2,326,444, and net income of \$367,876.

16 33. Rio Verde's most recent annual report indicates that it has approximately 1,700  
17 customers.

18 34. Staff's compliance database indicates that Rio Verde has no delinquent compliance  
19 items with the Commission.

20 35. Rio Verde has on file with the Commission both an approved curtailment tariff and an  
21 approved cross-connection control and backflow prevention tariff.

22 36. Staff did not indicate that Rio Verde has any outstanding complaints before the  
23 Commission, and no customers or other members of the public have expressed opposition to Rio  
24 Verde's application herein.

25 37. Staff believes that Rio Verde is fit and proper to receive the requested CC&N  
26 extension and that granting the extension is in the public interest. (*See* Tr. at 53.)

27 ...

28 ...

1 **Staff's Recommendations**

2       38. Staff recommends that the Commission approve Rio Verde's application to extend its  
3 CC&N to include the CC&N extension area, as described in Exhibit 1, subject to compliance with the  
4 following conditions:

5           (a) Rio Verde shall continue to charge its authorized rates and charges within the  
6 CC&N extension area;

7           (b) Rio Verde shall file with Docket Control, as a compliance item in this docket,  
8 no later than December 31, 2015, a copy of the county franchise agreement for the CC&N extension  
9 area;

10          (c) Rio Verde shall not in the future serve any customers that are not located  
11 within or contiguous to its CC&N area;

12          (d) Rio Verde should comply with A.A.C. R14-2-402(E) for serving contiguous  
13 lots;

14          (e) Rio Verde shall provide notice to all affected customers, and those customers  
15 shall have an opportunity to be heard;<sup>10</sup> and

16          (f) Rio Verde shall file with Docket Control, as a compliance item in this docket,  
17 no later than December 31, 2015, an updated ADWR Compliance Status Report indicating that Rio  
18 Verde is in compliance with ADWR requirements.<sup>11</sup>

19       39. Staff further recommends that the Commission's Decision granting the requested  
20 CC&N extension be considered null and void, after due process, should Rio Verde fail to comply  
21 with any of the conditions listed in Findings of Fact No. 38.

22       40. Rio Verde objects to Staff's recommendation for Rio Verde's CC&N extension to be  
23 conditioned on acquisition and filing, by December 31, 2015, of an ADWR Compliance Status  
24 Report showing that Rio Verde is fully compliant with ADWR requirements. (Tr. at 59.) Rio Verde  
25 would not object to a requirement for Rio Verde to work with ADWR to have the compliance issue  
26

27 <sup>10</sup> Mr. Becker confirmed at hearing that the notice issue had been resolved, as Rio Verde had provided notice  
subsequent to the creation of the Staff Report. (Tr. at 53.)

28 <sup>11</sup> An ADWR Compliance Status Report dated January 26, 2015, showed that Rio Verde was non-compliant with the  
GPCD Program, that Rio Verde was compliant with the MNPCCP, and that the MNPCCP did not apply to Rio Verde.

1 resolved and for Rio Verde to make filings with the Commission providing updates on the resolution  
2 of the compliance issue. (*Id.*)

3 **Resolution**

4 41. Staff's recommendations set forth in Findings of Fact No. 38(a), (b), (c), and (d) are  
5 reasonable and appropriate and should be adopted.

6 42. Rio Verde is in compliance with ADWR requirements. There is no need to require  
7 Rio Verde to file an updated ADWR Compliance Status Report.

8 **CONCLUSIONS OF LAW**

9 1. Rio Verde is a public service corporation within the meaning of Article XV of the  
10 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

11 2. The Commission has jurisdiction over Rio Verde and the subject matter of its  
12 application.

13 3. Notice of the application was provided in accordance with the law.

14 4. There is a public need and necessity for water service to be provided in the CC&N  
15 extension area described in Exhibit 1 and shown in Exhibit 2 hereto.

16 5. Rio Verde is a fit and proper entity to receive the requested extension of its CC&N  
17 service area to provide water service in the CC&N extension area described in Exhibit 1 and shown  
18 in Exhibit 2 hereto.

19 6. It is just and reasonable and in the public interest to grant Rio Verde the requested  
20 extension of its CC&N service area to provide water service in the CC&N extension area described in  
21 Exhibit 1 and shown in Exhibit 2 hereto.

22 7. It is just and reasonable and in the public interest to adopt Staff's recommendations set  
23 forth in Findings of Fact No. 38(a), (b), (c), and (d).

24 **ORDER**

25 IT IS THEREFORE ORDERED that Rio Verde Utilities, Inc.'s application for an extension  
26 of its Certificate of Convenience and Necessity to provide water utility service in the area of  
27 Maricopa County described in Exhibit 1 and shown in Exhibit 2 hereto is approved, subject to the  
28 conditions set forth in the following ordering paragraphs.



1 IT IS FURTHER ORDERED that Rio Verde Utilities, Inc. shall continue to charge in the  
2 approved extension area the currently authorized water service rates and charges for its Maricopa  
3 County service area.

4 IT IS FURTHER ORDERED that Rio Verde Utilities, Inc. shall file with the Commission's  
5 Docket Control Center, as a compliance item in this docket, no later than December 31, 2015, a copy  
6 of a Maricopa County franchise agreement covering the approved extension area.

7 IT IS FURTHER ORDERED that Rio Verde Utilities, Inc. shall not in the future serve any  
8 customer that is not located within or contiguous to the service area authorized in its Certificate of  
9 Convenience and Necessity.

10 IT IS FURTHER ORDERED that Rio Verde Utilities, Inc. shall comply with the  
11 requirements of A.A.C. R14-2-402(E) if it desires to commence service to any property contiguous to  
12 the service area authorized in its Certificate of Convenience and Necessity.

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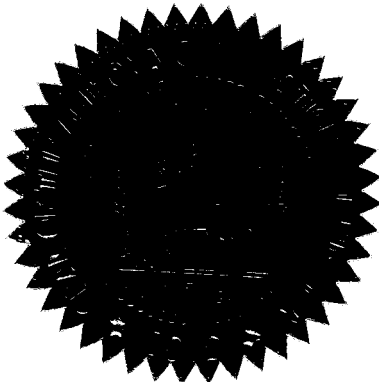
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1 IT IS FURTHER ORDERED that the Commission's approval of the extension of Rio Verde  
2 Utilities, Inc.'s Certificate of Convenience and Necessity, granted herein, shall be considered null and  
3 void, after due process, if Rio Verde Utilities, Inc. fails to meet the above conditions within the times  
4 specified.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN COMMISSIONER  
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COMMISSIONER COMMISSIONER COMMISSIONER  
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13 IN WITNESS WHEREOF, I, JODI JERICH, Executive  
14 Director of the Arizona Corporation Commission, have  
15 hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this 19th day of May 2015.

18   
JODI JERICH  
EXECUTIVE DIRECTOR

19 DISSENT \_\_\_\_\_

20  
21 DISSENT \_\_\_\_\_  
22 SH:ru

1 SERVICE LIST FOR: RIO VERDE UTILITIES, INC.

2 DOCKET NO.: WS-02156A-14-0401

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**EXHIBIT 1**

**Legal Description  
Rio Verde Utilities, Inc.  
Water CC&N Extension**

That portion of Section 7, Township 4 North, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona more particularly described as follows:

General Land Office Lots 2 and 3, except any portion lying south of the north right-of-way line of McDowell Mountain Road, being more particularly described as follows:

Commencing at the Northwest Corner of said Section 7;

THENCE South  $89^{\circ}55'51''$  East along the North line of said Section 7 a distance of 1,313.85 feet to the Northwest Corner of said Lot 3 and the TRUE POINT OF BEGINNING;

THENCE continuing South  $89^{\circ}55'51''$  East along the North line of said Section 7 a distance of 1,320.19 feet to the Northeast Corner of said Lot 3 which is also the Northwest Corner of said Lot 2;

THENCE continuing South  $89^{\circ}55'51''$  East along the North line of said Section 7 a distance of 1,320.00 feet to the Northeast Corner of said Lot 2;

THENCE South  $00^{\circ}00'21''$  East along the East line of said Lot 2 a distance of 503.72 feet to a point on the northerly right-of-way line of McDowell Mountain Road;

THENCE South  $80^{\circ}15'23''$  West along the northerly right-of-way line of McDowell Mountain Road a distance of 459.36 feet;

THENCE South  $80^{\circ}27'24''$  West along the northerly right-of-way line of McDowell Mountain Road a distance of 1,390.58 feet;

THENCE South  $80^{\circ}28'45''$  West along the northerly right-of-way line of McDowell Mountain Road a distance of 827.22 feet to a point on the West line of said Lot 3;

THENCE North  $00^{\circ}01'13''$  East along the West line of said Lot 3 a distance of 951.76 feet to the Northwest Corner of said Lot 3, the Point of Beginning.

RANGE 7 East

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WS-02156A (3)

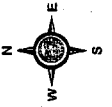
Rio Verde Utilities, Inc.

(1)

Rio Verde Utilities, Inc.  
Docket No. WS-02156A-14-0401  
(Application for CC&N Extension)

EXHIBIT 2

DOCKET NO. WS-02156A-14-0401



Prepared by:  
Arizona Corporation Commission  
Utilities Division  
Engineering Section/GIS Mapping  
602-542-4251

TRAN 7E 28 JUL 1987

DECISION NO. 75091